

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 16222 of Spring Valley-Wesley Heights Citizens' Association, pursuant to 11 DCMR 3105 and 3200.2, from the administrative decision of Gladys Hicks, Acting Zoning Administrator made on May 4, 1995, authorizing the issuance of Certificate of Occupancy No. B171651 for use of the basement and first floor for a retail drugstore and pharmacy for a structure in a WHOD/R-1-B District at premises 3301-03 45th Street, N.W. (Square 1603, Lots 1 and 2).

**HEARING DATES:** April 9 and June 4, 1997  
**DECISION DATE:** June 4, 1997

**ORDER**

The subject appeal involves property located at 3301-03 45<sup>th</sup> Street, N.W. The participants are as follows: Appellant: Spring Valley-Wesley Heights Citizens' Association (the "Association"); Respondent: Gladys Hicks, Acting Zoning Administrator; Intervenors: Ilia and Darina Pavlova (owners of the property), 12 households (the "neighbors") and Advisory Neighborhood Commission 3D.

The subject site was constructed prior to 1958. It was being used as a drug store when the Zoning Regulations were enacted on May 12, 1958, and the use was rendered nonconforming. The appellant alleged that on or about April 7, 1987, the drug store/pharmacy use at the site was discontinued and was never re-established. The appellant argued that when the owners purchased the property in December 1992, they knew or should have known that the property was zoned WHOD/R-1-B and that they had clear evidence that the drug store and pharmacy was actually closed and that the nonconforming use was discontinued and abandoned.

The appellant entered into the record a letter dated April 7, 1987 written to a Commissioner of ANC 3D indicating that the drug store at 45<sup>th</sup> and Macomb is closed. He also entered into the record five sworn affidavits from residents stating that the pharmacy formerly located at the site has been closed at least since approximately 1987-1988. Two of the affidavits indicate that the use has not been re-established.

The appellant noted that in 1983, the Zoning Commission adopted 11 DCMR 2005.1 which provides:

Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be constructed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

The appellant argued that this provision clearly establishes a three-year limitation for the discontinuance of a nonconforming use.

The appellant stated that on May 4, 1995, Certificate of Occupancy No. B171651 was issued to allow "Retail Drugs and Pharmacy" on the first floor and basement of the site. The appellant argue that this C of O was issued in error because any uses at the site must conform with the current zoning since the nonconforming use was discontinued more than three years ago.

On December 11, 1996, the appellant filed this appeal challenging the issuance of this C of O. The first hearing was scheduled for April 9, 1997. This hearing was postponed by the Board pursuant to a joint motion of the parties for a continuance to allow the parties an opportunity to negotiate an agreement on the factual issues involved. The new hearing was scheduled for June 4, 1997.

At the June 4<sup>th</sup> hearing, the Board heard extensive comments on the preliminary matters on the application (No. 16238) which is related to the subject appeal. After the Board decided to postpone the hearing in the application, the parties to the appeal stipulated that the drug store/pharmacy use of the subject site has been discontinued for a period of at least three years. They also agreed that the appeal should be granted rather than heard by the Board at that time or at a later time.

#### **ISSUES PRESENTED:**

**Whether the Acting Zoning Administrator erred in issuing a C of O for a retail drug store and pharmacy use in an R-1-B District when that use had been discontinued for more than three years?**

#### **CONCLUSIONS OF LAW AND OPINION:**

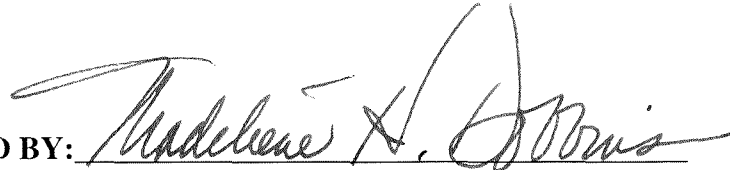
Based on the evidence of record and the stipulation of facts by the parties, the Board concludes that the use at issue was clearly discontinued for more than a three-year period and that the building permit was issued in error. The Board is of the opinion that it would promote judicial economy not to hear the appeal but to grant the appeal as agreed to by all parties.

Accordingly, it is hereby **ORDERED** that the appeal be **GRANTED**, and the decision of the Acting Zoning Administrator **REVERSED**.

**VOTE: 3-0** (Susan Morgan Hinton, Laura M. Richards and Herbert M. Franklin to grant; Angel F. Clarens and Sheila Cross Reid not present, not voting).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

ATTESTED BY:



**MADELIENE H. DOBBINS**

**Director**

**FINAL DATE OF ORDER:** FEB 18 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATION OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ape16222/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPEAL NO. 16222**

As Director of the Board of Zoning Adjustment, I certify and attest that on FEB 18 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed blow:

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Joseph D. Murphy, Chairperson  
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Attested By:

A handwritten signature in dark ink, appearing to read "Madeliene H. Dobbins", written over a horizontal line.

**MADELIENE H. DOBBINS**  
Director

Date: FEB 18 1998

attest/ljp